08-16-05

AF

PATENT
ATTORNEY DOCKET NO.: 21276.00.9044

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the application of:	Wright, et al.	)	
Serial No.:	09/415,696	)	Examiner: Jes F. Pascua
Filed:	October 12, 1999	)	Group Art Unit: 3727

TITLE: RECLOSABLE FASTENER PROFILE SEAL AND METHOD OF FORMING A FASTENER PROFILE ASSEMBLY

MAIL STOP APPEAL BRIEF - PATENTS
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Certificate of Express Mailing

I hereby certify that this paper is being mailed via Express Mail, under Label No. EV265290483 US this day, August 15, 2005 in an envelope addressed to: MAIL STOP Appeal Brief-Patents, Commissioner of Patents, PO Box 1450, Alexandria VA 22313 1450.

Robert S. Beiser

TRANSMITTAL OF APPEAL BRIEF

Transmitted herewith, in triplicate, is the Appeal Brief in this application, with respect to the Notice of Appeal filed on November 1, 2004 and the Notification of Non-Compliant Appeal Brief dated July 14, 2005.

This application is on behalf of a small entity.

Pursuant to 37 C.F.R. §1.17(c), the fee for filing the Appeal Brief is $250.00 for a small entity.

Authorization is hereby made to charge the amount of $250.00 to Deposit Account No. 22-0259. The Commissioner is also authorized to charge any additional fees required by this paper or credit any overpayment thereof to Deposit Account No. 22-0259.

A duplicate of this paper is attached.

Respectfully submitted,

Vedder, Price, Kaufman & Kammholz, P.C.

Robert S. Beiser

Dated: August 15, 2005

By:
Robert S. Beiser
Registration No. 28,687

Vedder Price Kaufman & Kammholz, P.C.
222 North LaSalle Street, Suite 2400
Chicago, Illinois 60601-1003
(312) 609-7500
(312) 609-5005 (Fax)
rbeiser@vedderprice.com
Customer No. 23418

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re application of:
Wright et al.

Application No.: 09/415,696

Filed: October 12, 1999

For: RECLOSABLE FASTENER PROFILE SEAL AND METHOD OF FORMING A FASTENER PROFILE ASSEMBLY

Examiner: Jes Pascua

Group Art Unit: 3727

Our File No.: 21276.00.9044

Certificate of Express Mailing

I hereby certify that this paper is being mailed via Express Mail, under Label No. EV265290483 US this day, August 15, 2005 in an envelope addressed to: MAIL STOP Appeal Brief-Patents, Commissioner of Patents, PO Box 1450, Alexandria VA 22313 1450.

Robert S. Beiser

APPEAL BRIEF PURSUANT TO 37 C.F.R. § 41.37

Dear Sir:

Appellants submit this brief further to the Notice of Appeal filed November 1, 2004, in the above-identified application and the Notification of Non-Compliant Appeal Brief dated July 14, 2005.

I. Real Party in Interest

Com-Pac International, Inc. is the real party in interest in this appeal by virtue of an executed Assignment from the named Inventors of their entire interest to Com-Pac International, Inc.. The Assignment evincing such ownership interest was recorded on January 7, 2000, in the United States Patent and Trademark Office at Reel 010521, Frame 0100.

II. Related Appeals and Interferences

With respect to other appeals or inferences that will directly affect, or be directly affected by , or have a bearing on the Board's decision in this appeal is as follows:

Appeal No. 2003-0068 filed June 17, 2002

III. Status of Claims

The originally filed Application contained claims 1-21. During prosecution, claims 2-3, 11-12 and 20 were cancelled, and claims 11-17 and 21 were withdrawn. Additionally, claims 1, 18 and 19 were amended during prosecution of the present application. Claims 22-26 were added then subsequently withdrawn. Thus, the presently pending claims are 1, 4-10, 18 and 19. A copy of the presently pending claims is attached in Appendix A.

The final Office Action, mailed on May 28, 2004, has made a final rejection of claims 1, 4-10, 18 and 19. Claims 1, 4-10, 18 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Tilman ('689). The Final Office action cites to the board's decision of August 11, 2003 in support of this argument. The examiner continues to insist that Tilman declares an "airtight" seal, even though the Tilman declaration states "the seal of the '689 patent is not airtight under any definition of airtight."

Claims 1, 4-9, 18 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Howard ('914). The Office Action of May 28, 2004 does not address the Howard reference in the Remarks section.

Claims 1, 4-10, 18 and 19 are rejected under 35 U.S.C. 102(e) as being anticipated by Anderson ('113). The Examiner states that fastener segment shown in FIG. 6 of Anderson '113 is clearly less thick than the combined thickness of the first and second profile segments shown in FIGS. 3-5.

As indicated in the Notification of Non-Compliant Appeal Brief of July 14, 2005, Applicant's reply filed August 30, 2004 overcame the following rejection(s): The Terminal Disclaimer filed 08/30/2004 overcame the rejection of claims 1, 4-10, 18 and 19 under the judicially created doctrine of obviousness-type double patenting, the rejection of claim 18 under 35 USC 102 and the rejection of claims 1, 4-10, and 19 under 35 USC 103. The 09/10/2003 Declaration of Paul Tilman overcame the rejection of claims 1, 4-10, 18 and 19 under the principles of *res judicata.*

IV. Status of Amendments

A "Notice of Appeal" was filed on August 30, 2004 in response to the final Office Action mailed on May 28, 2004. Our reply was filed August 30, 2004. In the Official Action of October 28, 2004, Applicant's reply overcame the following rejection(s): The Terminal Disclaimer filed 08/30/2004 overcame the rejection of claims 1, 4-10, 18 and 19 under the judicially created doctrine of obviousness-type double patenting, the rejection of claim 18 under 35 USC 102 and the rejection of claims 1, 4-10, and 19 under 35 USC 103. The 09/10/2003 Declaration of Paul Tilman overcame the rejection of claims 1, 4-10, 18 and 19 under the principles of *res judicata.*

V. Summary of Claimed Subject Matter

The present invention provides a reclosable fastener profile seal assembly and a reclosable storage bag including the assembly. The reclosable fastener profile assembly comprises a first profile strip including at least one rib that extends from the surface of the first strip and a second profile strip opposite the first strip. The second strip includes at least two ribs that extend from the surface of the second strip. The rib of the first strip and the ribs of the second strip are adapted to sealingly engage and maintain an airtight seal when so engaged.

The assembly also comprises a compression molded segment seal which includes a fused section of the first and second profile strips formed through the application of heat and pressure. The fused section is substantially flattened to form an airtight seal of the first and second profile strips, without distorting the ribs of the first and second profile strips outside of the fused section, thereby maintaining the airtight seal of the first and second profile strips when interlocked.

The invention reclosable storage bag further comprises a first bag wall, a second bag wall and a reclosable fastener profile assembly as described above.

In one embodiment, the individual reclosable fastener profiles are supplied in relatively great lengths, thereby providing a continuous linear strip of fully formed reclosable bag profiles. In such an embodiment, the completed reclosable fasteners may be wound onto a roll for later separation and addition to bag walls.

The Examiner, in the Notification of Non-Compliant Appeal Brief dated July 14, 2005, requested a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number, and to the drawings and reference characters. They are as follows:

Claim 1 is directed to a reclosable fastener profile assembly. The assembly comprises a continuous supply of a first profile strip (as shown in pg. 2 lines 11 and 15), Fig. 1, No. 14 and further includes at least one rib that extends from the surface of said first strip (as shown in pg. 5 lines 14-16), Fig. 3, Nos. 30, 34, and 38. Claim 1 is also directed to a continuous supply of a second profile strip opposite said first strip (as shown in pg. 2 lines 11, 15), Fig. 2, No. 18. The second strip includes at least two ribs that extend from the surface of said second strip (as shown on page 5 starting at line 22, as amended), Fig. 4, Nos. 50, 54, 58. The rib of said first strip and said ribs of said second strip are adapted to sealingly engage and maintain an airtight seal when so engaged (as shown in pg. 5 starting at line 22, as amended), Fig. 8, No. 80. Claim 1 is further directed to a compression molded segment seal portion that fuses said first profile strip, said second profile strip and said ribs of said first profile strip and said second strip (as shown in pg. 2 lines 12-14, FIG. 1 number 22). In addition, said compression molded segment seal includes a fused section of said first and second profile strips formed through the application of heat and pressure (as shown in pg. 6 lines 20-22) Fig. 8, No. 22. As a result, the fused section is substantially flattened to form an airtight seal of said first and second profile strips, without distorting said ribs of said first and second profile strips outside of said fused section, thereby maintaining said airtight seal of said first and second profile strips when interlocked (as shown in pg. 2 lines 16-17), Fig. 1, No. 22. Claim 1 is finally directed to the compression molded segment seal portion having a thickness less than the combined thickness of said first profile segment and said second profile segment (as shown in pg. 6 lines 12-14), Fig. 1, No. 22.

Claim 18 is directed to a reclosable storage bag comprising a first bag wall (as shown on pg. 5 line 14 of the specification), Figs. 7, 8, No. 72, a second bag wall (as shown in Figs 7,8 No. 74), and a reclosable fastener profile assembly (as shown in FIG. 1, No. 4). The assembly further comprises a first profile strip including at least one rib that extends from the surface of said first strip (as shown in pg. 5 lines 16 and 19-20 of the specification, Fig. 3, Nos. 30, 34, 38). The second profile strip opposite said first strip, wherein the strip includes at least two ribs that

extend from the surface of said second strip (as shown on pg. 5 starting at line 22, of the specification as amended, Fig. 4, Nos. 50, 54, 58). Further, the rib of said first strip and said ribs of said second strip are adapted to sealingly engage and maintain an airtight seal when so engaged (as shown in pg. 5 starting at line 22, as amended of the specification, Fig. 8 No. 80). Claim 18 is further directed to a compression molded segment seal portion fusing said first profile strip said second profile strip and said ribs of said first profile strip and said second profile strip (as shown in pg. 6 lines 6-7 of the specification, Fig. 8, No. 22). In addition, the compression molded segment seal includes a fused section of said first and second profile strips formed through the application of heat and pressure (as shown in pg. 6 lines 20-22 of the specification, Fig. 1, No. 22). Further, said fused section is substantially flattened to form an airtight seal of said first and second profile strips, without distorting said ribs of said first and second profile strips outside of said fused section, thereby maintaining said airtight seal of said first and second profile strips when interlocked (as shown in pg. 6 lines 12-14 of the specification, Fig. 1, No. 22). Thus, said first profile strip and said second profile strip are heat sealed to said first bag wall and said second bag wall, respectively (as shown in Fig. 7, Nos. 72 and 74). Claim 18 is still further directed to the compression molded segment seal portion that has a thickness less than the combined thickness of said first profile segment and said second profile segment (as shown in pg. 6 lines 12-14, Fig. 1, No. 22).

VI. Brief Summary of the Prior Art Reference

U.S. Patent No. 5,071,689 (Tilman) discloses a reclosable fastener having male and female profiles with a spot seal at the ends of the fastener and a gap between the end of the female profile and the spot seal. U.S. Patent No. 3,986,914 (Howard) discloses a method of manufacture of a reclosable container using "bead" seals at the junction of the fastener and the side walls of the plastic container which are liquid tight but which deform the fastener profile. U.S. Patent No. 6,033,113 (Anderson) discloses a plastic bag with a zipper closure which is gas tight by means of a gap filling fillet, which is completely separate from the fastener strip.

VII. Grounds of Rejection to be Reviewed on Appeal

The issues on appeal is whether claims 1, 4, 6-8, 10 and 18-19 are patentable under 35 U.S.C. Section 102(b) over U.S. Patent No. 5,071,689 issued to Tilman on December 10, 1991; whether claims 1, 4, 6-10 and 18-19 are patentable under 35 U.S.C.§ 102(b) over U.S. Patent No. 3,986,914 issued to Howard et al. on October 19, 1976; whether claims 1, 4-10, 18 and 19 are patentable under 35 U.S.C. §102(e) over U.S. Patent 6,033,113, issued to Anderson on March 7, 2000.

VIII. Argument

1. Claims 1, 4-10, 18 and 19 stand rejected under 35 U.S.C. §102(b) as being anticipated by Tilman '689 for the reasons set forth in the Board's decision of July 11, 2003.

The present case is a Request for Continued Examination in light of the Declaration of Paul A. Tilman. Mr. Tilman is the sole inventor of U.S. Patent No. 5,071,689, hereafter referred to as the '689 patent, which is the reference upon which the pending claims were rejected – ostensibly because the '689 patent inherently taught an airtight seal.

In the parent case to the present application, claims similar to Claims 1, 4-10, 18 and 19 were rejected by the Board because the Examiner alleged, and the Board agreed, that the '689 patent inherently disclosed an airtight seal. The Board stated on page 7 of the Decision that: "the Tilman '689 disclosure [was] sufficient to reasonably support the examiner's determination that the spot seal 21 of Tilman '689 [possessed] the...limitations recited in the last paragraph of claim 1 so as to establish a prima facie case of anticipation and thereby shift the burden to appellants to prove that the seal of Tilman '689 does not possess such features." (Emphasis added.)

In response to the Board's admonition to prove that the seal of Tilman '689 is not airtight, the applicants have enclosed the Declaration of Paul A. Tilman, who as the sole inventor of the '689 patent states that the '689 patent does not teach an airtight seal under any definition of airtight. Mr. Tilman's declaration proves that the '689 patent does not show, suggest, or imply an airtight seal.

In particular, paragraph 11 of the Tilman declaration states that FIG. 4 of the '689 patent shows a small space between the spot seal 21 and the terminal extent of the female base 14 where there is no seal structure. This small space is clearly identified in the Tilman declaration.

As stated in paragraph 10 of the Tilman declaration, the female base 14 and the arrow-shaped protuberance 15 that form a reclosable seal do not extend all the way to the spot seal because of the heat and mechanical deformation used to form the spot seal. The air-passage space is encircled and identified in the Tilman Declaration as an "AIR GAP REGION."

As the sole inventor of the inventor of the '689 patent, Mr. Tilman is the person most knowledgeable about the seal structure and methodology disclosed in the '689 patent. (Decl. of Paul A. Tilman, 8.) According to Mr. Tilman, the spot sealing disclosed in the '689 patent cannot produce an airtight seal because the air gap between the spot seal and the sealing profiles that will let air freely pass. (Decl. of Paul A. Tilman, 13) According to Mr. Tilman, the seal structure and methodology disclosed in the '689 patent will not produce an airtight seal, regardless of how the word "airtight" is defined. (Decl. of Paul A. Tilman, 14.)

Mr. Tilman's declaration clearly and irrefutably establishes that the Examiner's reliance upon the '689 patent was improper. In light of the Declaration of Paul A. Tilman, allowance of pending Claims 1, 4-10, 18 and 19 is respectfully requested.

The Examiner has indicated that, although the Tilman Declaration states that the seal of '689 patent is not airtight under any definition of airtight, the Examiner is still not convinced that the Tilman's definition of airtight seal is commensurate with Applicant's definition as set forth in the specification of the present application. However, the Examiner further indicates that Applicant's specification fails to provide any specific definition of "an airtight seal". Accordingly, Applicant has submitted to the Examiner Webster's New Collegiate Dictionary which defines airtight as "impermeable to air or nearly so." As well settled, the dictionary definitions provide evidence of a claim terms ordinary meaning: Texas Digital Systems v. Telegenics, Inc., 308 F.3d 1193, 1202 (Fed. Cir. 2002). Thus, whether using the dictionary definition of "airtight" or Tilman's statement that his reference does not teach an airtight seal under any definition of "airtight," it is clear that Tilman does not anticipate either specifically or inherently an airtight seal. The Examiner suggests that, because Applicant says there is a "wide

range of applications" for their "airtight seal" that Applicant's definition is broader in scope than air molecules at atmospheric pressure and room temperature as discussed by Tilman.

Tilman's definition of "airtight seal" is commensurate with Applicant's definition as set forth in the specification of the present application. In paragraph 6 of the Tilman declaration, it states that "[A]n 'airtight seal' is a seal that will at least prohibit the movement of atmospheric pressure, room-temperature air molecules across the seal for an indefinite length of time." Applicant's specification fails to provide any specific definition of an "airtight seal." At best, Applicant mentions in the "Summary of the Invention" (page 2, lines 16-17), "Interlocking ribs are included on the profiles to create an airtight reclosable seal which is suitable for a wide range of applications." It appears that Applicant's "wide range of applications" for their "airtight seal" is much broader in scope than air molecules at atmospheric pressure and room-temperature as discussed by Tilman.

Clearly, if Tilman's fastener strip will not provide an airtight seal under ambient room conditions, it certainly will not provide one under increased or decrease pressure or temperature. Accordingly, Applicant respectfully requests reconsideration and allowance of Claims 1, 4-10, 18 and 19.

The Examiner further suggests that Figure 4 of Tilman's '689 clearly shows a compression molded seal portion having a thickness less than the combined thickness of the first and second profile segments as is now claimed. However, Claim 1 and Claim 18, as amended claimed, "said compression molded segment seal portion having a thickness less than the combined thickness of said first profile segment and said second profile segment." The compression molded segment seal portion referred to includes, "a fused section of said first and second profile strips formed through the application of heat and pressure, said fused section substantially flattened to form an airtight seal of said first and second profile strips without distorting said ribs or said first and second profile strips outside of said few section, thereby maintaining said airtight seal of said first and second profile strips when interlocked." Therefore, since Tilman does not teach an airtight seal under any definition of airtight, Figure 4 of Tilman cannot anticipate the compression molded seal of Claims 1 and 18 of the present invention. While it is true that Figure 4 of Tilman does show a seal portion between two fastener strips,

which is thinner than the fastener strips, the seal portion does not teach, suggest or imply the compression molded segment seal portion which is airtight.

2. Claims 1, 4-10, 18 and 19 stand rejected under 35 U.S.C. §102(b) as being anticipated by Howard '914. Applicant respectfully submits that the patent of Howard discloses a liquid tight not an airtight seal. The word "airtight" is not found in the Howard reference. Further, Howard teaches a plastic bead seal at the junction of the fastener and the side walls of a plastic container, not a compression molded seal as claimed in the present invention. As seen in Howard, a bead seal is formed, see Howard, Col. 3, lines 25-38. Thermal "impulse" sealing, as is known, is a process of welding thermoplastic films in which the layers to be welded are clamped by a pair of jaws, one of which is a resilient pressure jaw and the other of which is heater jaw. The heater jaw contains a heater element in the form of a metal strip of low heat capacity that can be instantly heater by an electrical current in which it will cool rapidly when the current is removed. After tightly closing the jaws over the film, electrical impulses are applied to the heater for a short period, usually less than one second, to heat the film to its welding temperature. After the weld has been allowed to cool under pressure, the jaws are opened and the welded film is removed. Claims 1 and 18 of the present application claim a compression molded segment seal portion formed through the application of feed and pressure, not just heat as in the Howard reference.

As noted in Anderson '113, "Another practical consideration that makes the Howard process inferior is that, although the process does attempt to reduce escape gaps, it does so by deforming the actual sealing profile of the zipper closure. By borrowing material from the interlocking portions of the zipper closure to close escape gaps, the Howard process undesirably compromises the integrity of the zipper seal. Thus, although plastic bags made by the Howard process may be more leak-resistant (i.e. more gas-tight and liquid-tight) at rest than those bags made by other conventional techniques that did not eliminate escape gaps, such bags made by the Howard process would tend to open prematurely when subjected to even minor forces, for example, when the contents of a plastic falls against the zipper closure." In claim 1, there is no distortion of the ribs of the first or second profile strips outside of the fused section. This is in direct contrast to Anderson and Howard.

It should also be noted that the Examiner finally rejected the aforesaid claims on the basis of a newly cited reference to Howard '914. Therefore the rejection under Howard should have been a non-final rejection. Accordingly, reconsideration and allowance of Claims 1, 4-10, 18 and 19 are respectfully requested.

3. Claims 1, 4-10, 18 and 19 stand rejected under 35 U.S.C. §102(e) as being clearly anticipated by Anderson '113. The patent of Anderson discloses a plastic bag with a zipper closer which is gas-tight by means of a gap filling fillet 60 found in Column 5, lines 23-28 of Anderson. The fillet is a completely separate element from the fastener strip. Claims 1 and 18 of the present invention claim the compression molded segment seal portion as including a fused section of the first and second profile strips substantially flattened to form an airtight seal without distorting the ribs and the compression molded segments seal portion having a thickness less than the combined thickness of the first profile segment and second profile segment. Anderson, to the contrary, has additional material in the form of the fillet attached to the fastener, and it is the fillet that forms the airtight seal, not the fused sections of the first and second profile strips. Accordingly, reconsideration and allowance of Claims 1, 4-10, 18 and 19 is respectfully requested.

IX. Conclusion

For the reasons advanced above, Appellants submit that the Examiner erred in rejecting pending claims 1, 4-10, 18 and 19 and respectfully request reversal of the decision of the Examiner.

Respectfully submitted,

Date: 8/15/05

By: Robert S. Beiser

Robert S. Beiser
Registration No. 28,687

VEDDER, PRICE, KAUFMAN &
KAMMHOLZ, P.C.
222 North LaSalle Street
Chicago, Illinois 60601
(312) 609-7848
Fax: (312) 609-5005

CLAIMS ON APPEAL

Claim 1: A reclosable fastener profile assembly, said assembly comprising:
a continuous supply of a first profile strip including at least one rib that extends from the surface of said first strip;
a continuous supply of a second profile strip opposite said first strip; said second strip including at least two ribs that extend from the surface of said second strip; said rib of said first strip and said ribs of said second strip adapted to sealingly engage and maintain an airtight seal when so engaged;
a compression molded segment seal portion fusing said first profile strip, said second profile strip and said ribs of said first profile: strip and said second strip; said compression molded segment seal including a fused section of said first and second profile strips formed through the application of heat and pressure; said fused section substantially flattened to form an airtight seal of said first and second profile strips, without distorting said ribs of said first and second profile strips outside of said fused section, thereby maintaining said airtight seal of said first and second profile strips when interlocked; and
said compression molded segment seal portion having a thickness less than the combined thickness of said first profile segment and said second profile segment.

Claim 4: The reclosable fastener profile assembly of Claim l, wherein said compression molded segment seal includes a severing portion of said first profile strip and said second profile strip for cutting said fastener profile and creating an individual profile fastener assembly.

Claim 5: The reclosable fastener profile assembly of Claim l, wherein said continuous supply of first profile strips, said continuous supply of second profile strips and a plurality of said compression molded segment seal create a continuous linear supply of profile fastener assemblies.

Claim 6: The reclosable fastener profile assembly of Claim l, wherein said first profile strip and said second profile strip are configured to fittingly mate together such that said first profile strip

is flush with said second profile strip when said first profile strip and said second profile are engaged.

Claim 7: The reclosable fastener profile assembly of Claim 1, wherein said ribs of first and second strips have respective head portions and neck portions, wherein said head portions are accurate in profile.

Claim 8 : The reclosable fastener profile assembly of Claim l, wherein said first strip includes a first end and a second end, said second strip further including a first end and second end, wherein respective first ends and respective second ends of said first and second strips are created through application of said compression molded segment seal.

Claim 9: The reclosable fastener profile assembly of Claim l, wherein said ribs of said first and second strips have respective head portions and neck portions, and wherein said head portions are wider than said neck portions.

Claim 10: The reclosable fastener profile assembly of Claim 1, wherein said second strip includes one more rib than said first strip.

Claim 18: A reclosable storage bag comprising:
a first bag wall;
a second bag wall;
a reclosable fastener profile assembly, said assembly comprising:
a first profile strip including at least one rib that extends from the surface of said first strip;
a second profile strip opposite said first strip said strip including at least two ribs that extend from the surface of said second strip; said rib of said first strip and said ribs of said second strip adapted to sealingly engage and maintain an airtight seal when so engaged;
a compression molded segment seal portion fusing said first profile strip, said second profile strip and said ribs of said first profile strip and said second profile strip; said compression molded segment seal including a fused section of said first and second profile strips formed through the application of heat and pressure; said fused section substantially flattened to form an

airtight seal of said first and second profile strips, without distorting said ribs of said first and second profile strips outside of said fused section, thereby maintaining said airtight seal of said first and second profile strips when interlocked; wherein said first profile strip and said second profile strip are heat sealed to said first bag wall and said second bag wall, respectively; and said compression molded segment seal portion having a thickness less than the combined thickness of said first profile segment and said second profile segment.

Claim 19: The reclosable fastener profile assembly of Claim 1, wherein said profile assembly further includes:

a first bag wall;

a second bag wall where edges of said first and second bag walls are sealed together thereby defining an inner bag; and

said compression molded segment seal portion having a thickness less than the combined thickness of said first profile segment and said second profile segment.

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: WRIGHT et al.
Appeal No. 2003-0068
Application No. 09/415,696
Filing Date: October 12, 1999

Examiner: J. Pascua
Art Group: 3727

Atty. Docket No. 21276.00.9044

Title: **RECLOSABLE FASTENER PROFILE SEAL AND METHOD OF FORMING A FASTENER PROFILE ASSEMBLY**

DECLARATION OF PAUL A. TILMAN

I, Paul A. Tilman, of W4582 Forest Lane in Sherwood, Wisconsin, 54169 declare that:

1. I am of lawful age, and if called upon to testify, I could and would competently testify to the facts set forth herein.

2. I am currently employed by Alcoa Consumer Products (Presto Products), 670 North Perkins Street, Appleton, Wisconsin 54192 as a Research and Development Manager and have been employed by Alcoa (Presto Products) since February 10, 1997.

3. I have 34 years of industry experience as a designer and as an inventor in the field of reclosable flexible plastic bags, which includes methods and apparatus for manufacturing recloseable bags, reclosable seals for plastic bags and methods and devices for manufacturing recloseable seals for plastic bags.

4. I am the sole inventor of U.S. Patent No. 5,071,689. I am also named as an inventor or co-inventor on approximately fifty (50) other U.S. and foreign patents that relate to reclosable flexible bags, seals for flexible bags and manufacturing seals for

flexible bags. I have been informed that my '689 patent has been cited by U.S. Patent Examiner Jes F. Pacua as inherently teaching an "airtight seal."

5. I am skilled in the art of recloseable seals for flexible bags, because of my years of industry experience, and because of the number of issued U.S. patents that bear my name as an inventor.

6. As one of skill in the art of recloseable plastic bags, an "airtight seal" is a seal that will at least prohibit the movement of atmospheric pressure, room-temperature air molecules across the seal for an indefinite length of time.

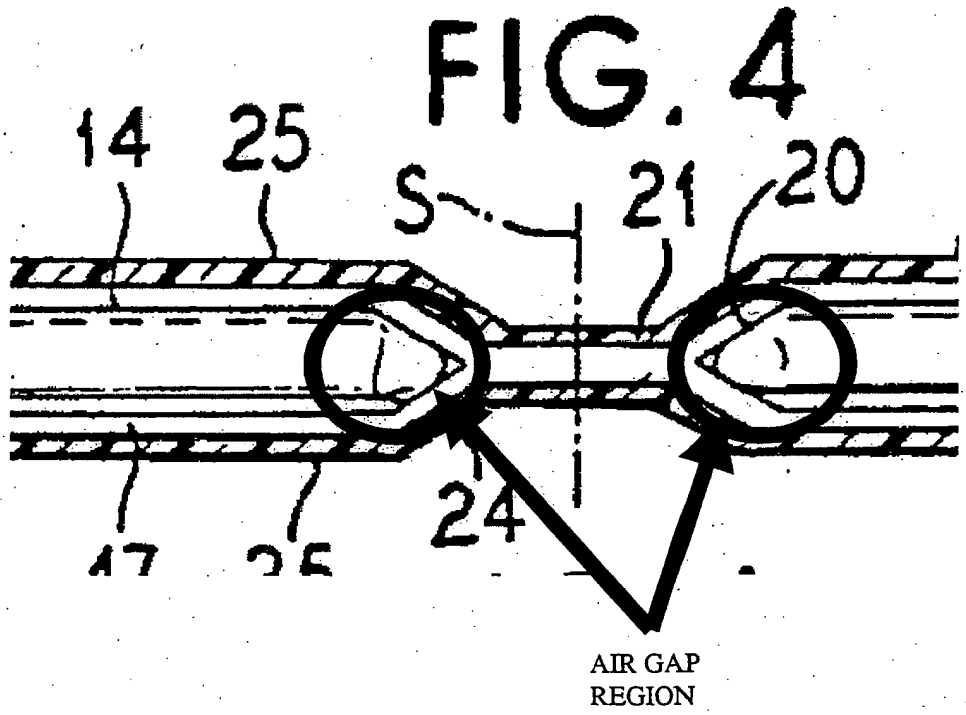
7. As the sole inventor of U.S. Patent No. 5,071,689, I am the person most knowledgeable about the seal structure and sealing methodology disclosed and claimed in the patent.

8. As the sole inventor of the '689 patent and as one of skill in the art, I know that the "spot sealing" as taught in the '689 patent will not provide a recloseable seal that will be an airtight seal. "Spot sealing" will not provide an airtight seal, because the spot sealing means 19 shown in FIG. 1 of the '689 patent completely or nearly completely flattens the female base 14 and the male rib or arrow-shaped protuberance 15, which together comprise recloseable zipper strips 10 and 11. When the female base 14 is flattened or even nearly completely flattened by the sealing means 19, there is no structure into which a male protuberance 15 can extend: there is no structure that provides any seal.

9. FIG. 3 of the '689 patent is an enlarged fragmentary plan view of the hinge portion of a zipper strip. FIG. 4 shows an edge elevational view of the zipper strip show fragment shown in FIG. 3.

10. FIG. 3 and FIG. 4 both show that the female base 14 and the arrow-shaped protuberance 15 that form a seal, do not extend all the way to where the spot seal/hinge 21 is formed by the spot sealing means 19. The female base 14 and the arrow-shaped protuberance 15 do not extend all the way to the seal because of deformation caused by local thermal and mechanical deformation of the base 14 and protuberance 15 caused by the spot sealing means 19.

11. FIG. 4 of the '689 patent shows a small space between the spot seal /hinge 21 and the terminal extent of the female base 14 / protuberance 15 where there is no seal structure. This space is encircled and identified as an "AIR GAP REGION" in the copy of FIG. 4 that appears below.



12. The "AIR GAP REGION" shown in FIG. 4 provides a passageway for air and other gas molecules. The AIR GAP REGION is an artifact of "spot sealing."

13. As the sole inventor of the '689 patent and as one skilled in the art of recloseable seals for plastic bags, the structure and method disclosed and claimed in the '689 patent does not explicitly or inherently provide a seal that is airtight under any definition of "airtight." The structure and method disclosed in the '689 patent will inherently leak air and other gaseous molecules through an air gap located between the extent of the sealing structures 14 and 15 and the spot seal produced by spot sealing means.

I declare under the penalties of perjury, that the foregoing is true and correct.

Dated: 29th Aug 03. By: _____
Paul A. Tilman

State of Wisconsin)

County of Outagamie

Before me personally appeared said Paul A. Tilman and acknowledge the foregoing instrument to be his free act and deed this 29 day of August, 2003.

Seal

_____
(Notary) My Commission Expires 3-18-07

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/415,696	10/12/1999	DONALD K. WRIGHT	21276-9044	5181

7590 07/14/2005

EXAMINER	

ROBERT S. BELSER
VEDDER PRICE KAUFMAN & KAMMHOLZ, P.C.
222 NORTH LASALLE STREET
CHICAGO, IL 60601

ART UNIT	PAPER NUMBER

DATE MAILED: 07/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Notification of Non-Compliant Appeal Brief (37 CFR 41.37)	Application No. 09/415,696	Applicant(s) WRIGHT ET AL.	
	Examiner Jes F. Pascua	Art Unit 3727	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on *01 November 2004* is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file a complete new brief in compliance with 37 CFR 41.37 within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer. **EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.**

1. ☒ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.

2. ☒ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed or confirmed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).

3. ☒ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).

4. ☒ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).

5. ☒ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi))

6. ☒ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).

7. ☒ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).

8. ☐ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner and relied upon by appellant in the appeal, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).

9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).

10. ☐ Other (including any explanation in support of the above items):

---.

Jes F. Pascua
Primary Examiner
Art Unit: 3727